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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

JON VRANESH, Plaintiff and Appellant, v. COMMISSION ON PROFESSIONAL COMPETENCE, Respondent, BOARD OF TRUSTEES OF THE PLEASANTON UNIFIED SCHOOL DISTRICT, et al, Real Parties in Interest and Respondents.	A152396 (Alameda County Super. Ct. No. RG15786168)

As the principal of a public elementary school, Jon Vranesh was both an administrator and a permanent, certificated special education teacher. In the former capacity he could be discharged without cause, but for the latter he could be removed only for cause as specified in section 44932 of the Education Code (section 44932). As permitted by that code, a commission on professional competence (Commission) was convened to determine whether cause existed for Vranesh's dismissal. At the conclusion of an eight-day hearing, that body concluded that dismissal was appropriate. The trial court, exercising independent judgment on the augmented administrative record, denied Vranesh's petition to set aside the dismissal.

Claiming he is the victim of procedural irregularities and errors of law, Vranesh seeks reversal of that denial. We conclude that none of Vranesh's seven claims of error has merit, and that the dispositive findings of the trial court are supported by substantial evidence. We thus, affirm.

BACKGROUND

This is why the commission decided Vranesh should be dismissed:

"Respondent began his tenure as principal of Walnut Grove Elementary School (Walnut Grove) in the fall of 2011. At that time, the teachers supported him and did what they could to help him succeed in his new role. When Respondent assumed his role as principal, Walnut Grove was a happy, extremely productive, and cohesive unit. Beginning in 2012, however, and continuing until the time he was placed on administrative leave in October 2013, Respondent used sexually derogatory and degrading words towards female subordinate employees . . . , as well as intimidating statements regarding the future employment of female employees. On repeated occasions he said he was going to 'get' several teachers, and expressed a desire to bludgeon one teacher, Kathy Greth, with a '2 by 4.'

"Respondent's conduct had an extremely negative effect upon the work of numerous employees and created a hostile work environment at Walnut Grove. The perception of the teachers who were sexually harassed by Respondent was that Respondent took advantage of his position as principal to bully, humiliate, and isolate teachers who were not in his inner circle. Teachers worried about their standing with Respondent and worked in fear that if Respondent decided that they were out of favor they might lose their jobs at Walnut Grove or suffer other negative consequences. After hearing Respondent express his feelings about wanting to hurt Kathy Greth, teachers also became fearful for their physical safety. As teachers became more distrustful and afraid of Respondent, their work suffered. Teachers also explained that their fear of Respondent kept them from reporting him to the [Pleasanton Unified School] District [(PUSD)] for about two years, until things had grown unbearable at school. Members of

the Walnut Grove staff who testified to Respondent's alarming behaviors did so with credibility and candor." (Fns. omitted.)

"Respondent engaged in serious misconduct involving District employees and District property, which had a severely adverse impact on the District, and particularly, the Walnut Grove staff. First, during 2012 through October 2013, Respondent engaged in a pattern of using language that was vulgar and sexually degrading, and at times threatening and intimidating, towards female subordinate employees. Respondent's sexual harassment of staff members had the effect of creating a hostile work environment at Walnut Grove and negatively impacted the work of the employees. This conduct amounts to a serious and protracted abuse of his authority, which reasonably caused the impacted employees to believe that their jobs or physical safety were at risk.

"Second, with respect to District property, Respondent purposefully destroyed the data on the District's laptop. Additionally, Respondent took, for his personal use, emails belonging to the District that contained pupil records and private medical and personnel information. In so doing, Respondent placed his personal needs over the privacy rights of students, many of whom were special education students; and he also violated the privacy rights of District employees. These actions reflect a lack of integrity on the part of Respondent. These actions also had an adverse impact on the District in that it lost the data on the laptop, and the District was placed in a position where one of its employees had broken a time-honored prohibition against disclosure of pupil information."

"Respondent's misconduct raises serious concerns as to whether he can be trusted to return to the classroom as a teacher in any capacity, and particularly in the capacity of a special education teacher. Respondent's misconduct evidences a lack of honesty and a disregard for the rights of his staff and students, as well as the interests and policies of the District and the laws of the state. Insofar as special education students are among the most vulnerable students in the District, they are especially in need of teachers who can be trusted to act with integrity, treat them respectfully, and maintain confidentiality, as required by Board policies and statutes. [¶] For these reasons it is determined that Respondent is not fit to return to the classroom as a special education teacher."

DISCUSSION

The scope of our function is clearly established. Given that Vranesh had a fundamental vested right in his employment, "the trial court correctly exercised its independent judgment in reviewing the administrative record . . . . [¶] The independent judgment test required the trial court to not only examine the administrative record for errors of law, but also exercise its independent judgment upon the evidence in a limited trial de novo. [Citation.] The trial court was permitted to draw its own reasonable inferences from the evidence and make its own credibility determinations. [Citation.] At the same time, it had to afford a strong presumption of correctness to the administrative findings . . . were contrary to the weight of the evidence. [Citation.] Our task is to review the record and determine whether the *trial court's* findings (not the administrative agency findings) are supported by substantial evidence. [Citations.] We resolve all evidentiary conflicts and draw all legitimate and reasonable inferences in favor of the trial court's decision." (*Candari v. Los Angeles Unified School Dist*. (2011) 193 Cal.App.4th 402, 407–408 (*Candari*).)

Vranesh goes a step farther than the usual appellant who has been denied relief under Code of Civil Procedure section 1094.5, because he challenges the fundamental fairness of the administrative proceeding. "Where, as here, the issue is whether a fair administrative hearing was conducted, the petitioner is entitled to an independent judicial determination of the issue. [Citation.] This independent review is not a 'trial de novo.' [Citations.] Instead, the court renders its independent judgment on the basis of the administrative record plus such additional evidence as may be admitted under section 1094.5, subdivision (e)." (*Pomona Valley Hospital Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93, 101.)

We will address the seven numbered contentions in Vranesh's opening brief in the order of their chronological occurrence, providing context as required for comprehension. Each section shall be prefaced by quoting the relevant heading from his brief.

"It was Error to Deny Vranesh his Right to be Evaluated by his Peers and to Compose the Panel of Two Administrators"

At the conclusion of an independent investigation, and while another investigation was still on-going, the Board of Trustees of the Pleasanton Unified School District (Board) determined to seek Vranesh's removal as principal of the Walnut Grove Elementary School and his dismissal as a teacher. After being served with notice of the reasons why his dismissal was being sought, Vranesh demanded a hearing. The matter would be decided by a commission on professional competence.

The commission is a creature of statute, specifically Education Code section 44944. Ordinarily, the commission is "a three-member administrative tribunal consisting of one credentialed teacher chosen by the school district, a second credentialed teacher chosen by the teacher facing dismissal or suspension, and an administrative law judge of the Office of Administrative Hearings who is both the chairperson and a voting member of the commission." (*Boliou v. Stockton Unified School Dist*. (2012) 207 Cal.App.4th 170, 176.)

The Board describes what occurred prior to the commission commencing the hearing on the merits: "Pursuant to Education Code section 44944, subdivision (c)(3), the parties each nominated members to serve on The Commission . . . . The District, however, objected to two of Vranesh's nominees—Christopher Bufkin and William Coupe—because they had not served in Vranesh's 'discipline' and/or because they were impermissibly biased due to connections with various witnesses. Administrative Law Judge ('ALJ') Diane Schneider sustained the District's objections, and gave Vranesh until April 16, 2015 to find a suitable panel member, and set the hearing to begin on April 20, 2015. On April 16, 2015, Vranesh informed the ALJ that he was unable to find a suitable panel member. The parties simultaneously requested a two-month continuance, in part, to allow Vranesh to nominate panel members who would be available in May and June 2015. The ALJ denied the continuance. Pursuant to Education Code section 44944, subdivision (c)(3), the ALJ asked the Alameda County

Superintendent of Education to nominate a panel member on Vranesh's behalf. The Alameda County Superintendent of Education nominated Mary Pippitt-Cervantes." The commission began the eight-day hearing on April 21 and concluded on July 15.

Vranesh argues that "in her rush to hold the hearing on the calendared date (April 20, 2015), the ALJ improperly ordered that Vranesh would waive his right to appoint a panel member if he couldn't find one by April 16, 2015, and if so, the Alameda County Superintendent of Education could appoint a panel member who was a *credentialed administrator*, not of the same discipline as Vranesh. [¶] … Due to the haste with which the ALJ wanted to hold the hearing, irrespective of Vranesh's rights under the Education Code, she denied the requested stipulated continuance. As a result, the ALJ unilaterally decided to ask the County Superintendent to appoint the second panel member, specifically allowing an administrator, Ms. Pippitt-Cervantes. As a result, Vranesh was held to a different and higher standard of review, contrary to Ed. Code § 44944(b)(5)." Vranesh is wrong.

The language of the governing statute is clear:

"In a dismissal . . . proceeding . . . the hearing shall be commenced within six months from the date of the employee's demand for a hearing. A continuance shall not extend the date for the commencement of the hearing more than six months from the date of the employee's request for a hearing, except for extraordinary circumstances, as determined by the administrative law judge." (Ed. Code, § 44944, subd. (b)(1)(A).)

"The member selected by the governing board of the school district and the member selected by the employee shall not be related to the employee and shall not be employees of the school district initiating the dismissal . . . . Each member shall hold a currently valid credential and have at least three years' experience within the past 10 years in the discipline of the employee." (*Id*., subd. (c)(5)(A).)

"The governing board of the school district and the employee shall select Commission on Professional Competence [CPC] members no later than 45 days before the date set for hearing, and shall serve notice of their selection upon all other parties and upon the Office of Administrative Hearings. Failure to meet this deadline shall constitute

a waiver of the right to selection, and the county board of education or its specific designee shall immediately make the selection. If the county board of education is also the governing board of the school district or has by statute been granted the powers of a governing board, the selection shall be made by the Superintendent . . . ." (*Id*. subd. (c)(3).)

Vranesh filed his demand for a hearing on December 12, 2104. The proposed stipulated continuance was offered on April 16, 2015, more than four months later. The two-month continuance would have put the start of the hearing beyond the six-month deadline specified in subdivision (b)(1)(A).)

It is a truism that trial courts have broad discretion to grant or deny continuances and will be reversed only for abuse. (E.g., *People v. Mora and Rangel* (2018) 5 Cal.5th 442, 508.) Equally true is that " '[a] party challenging a ruling on a continuance bears the burden of establishing an abuse of discretion, and an order denying a continuance is seldom successfully attacked.' " (*People v. Anderson* (2018) 5 Cal.5th 372, 397.) Obtaining a continuance requires a showing of good cause. (Gov. Code, § 11524, subd. (a); *Arnett v. Office of Admin. Hearings* (1996) 49 Cal.App.4th 332, 342.) Vranesh tells us nothing of what good cause showing he offered in support of the requested continuance, nor does he attempt to demonstrate why the denial was an abuse of the ALJ's discretion. Thus, he fails to demonstrate that the denial " 'exceeded the bounds of reason.' " (*Mercury Ins. Group v. Superior Court* (1998) 19 Cal.4th 332, 349.)

As for the commission's composition, Vranesh cannot complain of member Pippitt-Cervantes's asserted—but unproven—lack of "three years' experience within the past 10 years in the discipline of the employee." (Ed. Code, § 44944, subd. (c)(5)(A).) That applies only to the member of commission selected by the employee. There was no such member because Vranesh did not designate a qualified nominee in a timely manner. The consequence of that omission is statutorily specified: "Failure to meet this deadline shall constitute a waiver of the right to selection . . . ." (*Id*., subd. (c)(3).) Vranesh asserts he did nominate "multiple potential panel members," but he tells us nothing to undermine the ALJ's ruling that his nominees were either unqualified or biased. The

appointment of member Pippitt-Cervantes was in full compliance with the specified statutory procedure.

"The ALJ's Rush to Judgment Resulted in the Improper Exclusion of Vranesh's Highly Relevant Evidence in his Defense thus Depriving Vranesh of a Fair Trial"

According to Vranesh, "The original trial estimate for the CPC proceeding was 15 days. The trial concluded in 8 days, due to [her] abuse of her discretion to limit the examination of witnesses, preventing Vranesh from putting on his case. Vranesh brought a Motion to Augment the Administrative Record in the Writ proceedings to include the evidence that had been improperly excluded which, although adding some deposition testimony to the record, did not correct the prejudice of excluded live testimony from several witnesses." "The testimony of PUSD employees which had been excluded at the CPC hearing is set forth verbatim in the Declaration of Paul Kondrick in Support of the Motion to Augment the Record and Exhibits A-M thereto. A review of this testimony shows that it would have had a material effect on the course of the trial and should have been presented to the trier of fact. Its exclusion deprived Vranesh of a fair trial."

Vranesh devotes six pages in his opening brief to demonstrating that the ALJ's ruling was error. But Vranesh concedes he made a motion pursuant to Code of Civil Procedure section 1094.5, subdivision (e), to augment the record, and that the motion was granted. Thus the administrative record on which his petition was decided included those "Exhibits A-M" (plus ten additional pages of deposition testimony as agreed between counsel).

However, the trial court (Hon. Andrew Steckler) did not grant the motion to augment in full: "The court DENIES the motion to augment the record with what Vranesh states was improperly excluded oral testimony. If a party does not present or otherwise identify the evidence he or she seeks to add to the record, then the court cannot order that it be added to the record. Vranesh can, however, argue when briefing the petition that the ALJ improperly excluded evidence."

Ordinarily, we would review denial of a request to augment under the highly deferential abuse of discretion standard. (E.g., *Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1144.) We could not do so here because, as the trial court noted, Vranesh did not "identify" the evidence he believed was improperly excluded by the ALJ. (Cf. Evid. Code, § 354, subd. (a) [ruling excluding evidence not reviewable unless "[t]he substance . . . of the excluded evidence was made known to the court"].) In any event, Vranesh does not appear to challenge the unfavorable part of the augmentation order.

The ruling on Vranesh's motion to augment was made by Judge Andrew Steckler. The actual decision on Vranesh's petition was made by Judge Wynne Carvill. The next point of Vranesh's argument under this heading goes as follows:

"Superior Court Judge Carvill stated in his decision on the Writ that the court would follow Judge Steckler's Order, agreeing that evidence that other employees at the District used profanity had been improperly excluded: 'It was error to exclude this information in its entirety.' However, Judge Carvill did not follow the guidance of Judge Steckler's Order that such evidence was material to Vranesh's defense, that it would clearly have impeached the credibility of the District's witnesses, and the exclusion had prejudiced his right to a fair trial. Instead, Judge Carvill stated in his decision on the Writ that he finds against Vranesh after giving 'great weight to the CPC's credibility determinations' and 'has considered the evidence that other persons also swore from time to time and also used derogatory language but it is not persuaded that the school culture was so coarse that Vranesh's conduct was accepted conduct in the workplace.' "

This court long ago decided that in conducting an independent review of an administrative record, "the court [is] free to make its own determination of the credibility of the witnesses." (*Pittsburg Unified School Dist. v. Commission on Professional Competence* (1983) 146 Cal.App.3d 964, 977.) But while a trial court may make credibility determinations, there is no reported decision that such determinations must be made, and made only one way. That, we believe, is the unacceptable point of this argument.

The commission's decision included the following: "Credibility determinations are at the heart of this case. The claims made by the teachers against Respondent [Vranesh] were established by the consistent and persuasive testimony of multiple witnesses; the claim that Respondent destroyed District computer data was established by credible and convincing expert testimony. [¶] And time after time, starting with Respondent's denial to District personnel, to his denial that he engaged in any wrongdoing, to his claims of retaliation and discrimination against the District that were fully investigated and found to be baseless, to his destroying the data on the District's laptop and claiming it was accidental, Respondent has demonstrated that he lacks credibility and is not to be believed." The commission also treated as a factor of "aggravation of his misconduct . . . that Respondent's testimony at [the] hearing lacked credibility and candor." Dismissing Vranesh's claim that he had not intended to destroy evidence, or hinder the investigation of him, by deleting information from his laptop computer, the commission concluded that "Respondent's testimony on the point strains the bounds of credulity." Further, the commission found "candid and credible" the testimony of 19 witnesses against Vranesh, and that his defense to "misconduct involving district employees" was "wholly unsupported by any credible evidence" produced at the hearing. In short, Vranesh's version of events and motives was comprehensively rejected.

Citing *San Diego Unified School Dist. v. Commission on Professional Competence* (2013) 214 Cal.App.4th 1120, 1140 (*San Diego*), Judge Carvill stated he would "give 'great weight' to the Commission's credibility determinations," and at a later point stated "has given great weight to the CPC's credibility determinations." Further, Judge Carvill specifically stated that he drew "an adverse inference regarding Vranesh's credibility" with respect to his claim that he was the victim of retaliation. Although not expressed with the categorical vehemence employed by the commission, Judge Carvill obviously was not impressed with Vranesh's credibility. Although he disagreed with the commission on several issues, the disagreement was about legal standards and statutory application. At no point in his 10-page decision did Judge Carvill identify a historical

fact concerning which he disagreed with the commission. Thus, in plain effect, Judge Carvill accepted the historical facts as the commission found them, facts based in large measure on the commission's determinations the credibility of the witnesses who testified at the hearing.

Manifestly, Judge Carvill did not treat the augmented material as utterly destructive of the credibility of the numerous witnesses who testified against Vranesh. Vranesh points to no authority standing for the proposition that independent review compels a mass credibility determination to be made in favor of the party seeking to overturn an administrative decision.

What had been alluded to in preceding parts of Vranesh's argument is boldly expressed in his penultimate paragraph: "The exclusion of relevant evidence by the ALJ prevented Vranesh from having a fair hearing on the merits. The improper exclusion of relevant evidence in a case where the Superior Court has found that '[t]he facts are very much in dispute', demands that the Court of Appeal remand the action for a new trial. A remand, instead of review and findings by the Superior Court, is required to comply with Vranesh's right to a determination by his peers."

We are willing to concede the possibility that an erroneous evidentiary ruling made at an administrative hearing might be sufficiently impactful to doom any result. The obvious example would be a ruling that effectively hamstrings presentation of an effective defense. (Cf. *Crane v. Kentucky* (1986) 476 U.S. 683 [defense precluded from presenting evidence that confession was involuntary]; *Davis v. Alaska* (1974) 415 U.S. 308 [refusal to permit cross-examination of key prosecution witness].) This is hardly such a case. It is simply an instance where an erroneous evidentiary ruling was made. However, here, the impact of the error was not incurable.

The possibility of this sort of error is addressed in Code of Civil Procedure section 1094.5. The augmentation procedure of subdivision (e) expressly permits that information or material that was wrongly excluded at an administrative hearing may be admitted and considered "in cases in which the court is authorized . . . to exercise its independent judgment on the evidence . . . ." Vranesh concedes that he provided—and

Judge Steckler allowed—the "verbatim" "testimony . . . which had been excluded" to go into the administrative record to which Judge Carvill subsequently conducted his independent examination. Upon making that examination, Judge Carvill concluded that the ALJ's erroneous ruling had not rendered the hearing before the commission fundamentally unfair.

There is no doubt that Judge Carvill considered the excluded evidence of Vranesh's "Exhibits A-M." . Judge Carvill's conclusion was made after he appears to have concluded that the ALJ also improperly excluded what Judge Steckler in his augmentation order characterized as the "excluded oral testimony." With all of the excluded evidence before Judge Carvill, the erroneous evidentiary rulings were, to all practical effects, nullified. Upon reading the considerable administrative record, Judge Carvill would be able to place those rulings in perspective, and to assess their individual and cumulative impact. He clearly did not view the ALJ's rulings as sufficiently poisonous to taint the entire administrative hearing. That finding has the support of substantial evidence. Thus, we cannot agree with Vranesh that the ALJ's two rulings "prevented [him] from having a fair hearing on the merits." (*Pomona Valley Hospital Medical Center v. Superior Court*, *supra*, 55 Cal.App.4th 93, 101.)

"It was Legal Error for the CPC and Superior Court to Order Vranesh's Dismissal from his Position as a Permanent, Certificated Teacher Based on his Prior Conduct as an Administrator; the Law does not Allow his Position as Principal to be used as Grounds for his Dismissal as a Certificated Teacher."

Vranesh asserts "It was clear prejudicial error to use the alleged sexual harassment during the time he previously held the position of principal as grounds for his dismissal as a certificated teacher." This, he insists, establishes that he is the victim of "an inexplicable example of administrative double jeopardy . . . without his even having set foot in the classroom . . . ."

Judge Carvill rejected this argument: "In reaching these conclusions, the court has considered one other argument advanced by Vranesh—namely, that all the underlying conduct was in his role as principal and none from his tenure as a certificated teacher. While this is true, the court believes that, if as here the evidence of sexual harassment arising from his service as a principal is sufficient to rise to 'immoral conduct,' that same conduct can serve as a basis for his dismissal as a certificated teacher. It can and on this record does."

We agree with Judge Carvill in rejecting Vranesh's argument that what he did as principal could not be grounds for ending his employment as a teacher. Vranesh could be a principal only because he was already a certificated teacher. (See *Gilliam v. Moreno Valley Unified School Dist*. (1996) 48 Cal.App.4th 518, 521, fn. 1 ["School administrators must be certificated employees"].) To maintain that whatever acts or omissions done by a person as an administrator can have no relevance to a determination of whether that same person is qualified to retain certificated employment is not acceptable. Dishonesty is dishonesty, regardless of the position held by the dishonest person. The same is true for abuse of authority, unacceptable language, and physical intimidation, or whatever is cause for removal. Public policy will not admit to an immunity founded upon such an accident of chronology. To say that acts or omissions which warrant removal of an administrator cannot also support dismissal of a certificated employee exalts illogic based upon a purely artificial demarcation.

The commission concluded: "Respondent's misconduct raises serious concerns as to whether he can be trusted to return to the classroom as a teacher in any capacity, and particularly in the capacity of a special education teacher. Respondent's misconduct evidences a lack of honesty and a disregard for the rights of his staff and students, as well as the interests and policies of the District and the laws of the state. Insofar as special education students are among the most vulnerable students in the District, they are especially in need of teachers who can be trusted to act with integrity, treat them respectfully, and maintain confidentiality, as required by Board policies and statutes."

These are precisely the reasons why Vranesh's actions while principal cannot, and should not, be excluded from evaluating him as teacher.

"The Allegations and Findings of a Hostile Work Environment does not Equate with Immoral Conduct under the Education Code"

Section 44932 enumerates the causes for which a permanent employee may be dismissed. The first of those grounds is "immoral conduct," which includes, but is not limited to, "egregious misconduct." (§ 44932, subd. (a)(1).) Another causes is "evident unfitness for service." (*Id*., subd. (a)(6).) And yet another is "Physical or mental condition unfitting him or her to instruct or associate with children." (*Id*., subd., (a)(7).)

The commission concluded that Vranesh had acted immorally: "Immoral conduct is conduct that is 'hostile to the welfare of the general public and contrary to good morals' and 'includes conduct . . . showing moral indifference to the opinions of respectable members of the community, and [conduct showing an] inconsiderate attitude toward good order and the public welfare.' (*Board of Education v. Weiland* (1960) [179] Cal.App.2d 808, 811, citing *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734,740.) Based upon the matters set forth in Factual Findings 2, 21-31, and 33-40, it was established that Respondent committed acts constituting immoral conduct pursuant to Education Code section 44932, subdivision (a)(1), based upon his sexual harassment of female subordinate teachers at his school. Respondent's use of the [vulgar and sexually degrading language], as well as his use of violent language and intimidating statements, evidenced a profound indifference towards the rights of female subordinate employees and created a hostile and intimidating work environment at Walnut Grove."

Judge Carvill began his analysis by "affirm[ing] the CPC's findings . . . on sexual harassment," noting that he had "given great weight to the CPC's credibility determinations." He then noted that "immoral conduct" has been construed by our Supreme Court to allow for dismissal only if the person is unfit to teach. (See *Board of Education v. Jack M*. (1977) 19 Cal.3d 691, 696–697; *Morrison v. State Board of*

Education (1969) 1 Cal.3d 214, 225-230 (*Morrison*).) Applying that standard, he upheld the commission:

"The court finds that 'immoral conduct,' like 'sexual harassment,' depends on the totality of the circumstances but must be focused on fitness to serve as a school employee. An employee who has engaged in 'occasional, isolated, sporadic, or trivial' actions [citation] might be fairly charged with unsatisfactory performance or unprofessional conduct under Education Code 44932, whereas significantly more is required to sustain a charge of 'immoral conduct.' Similarly, a school administrator who ignored or condoned harassment among the staff might be fairly charged with unsatisfactory performance or unprofessional conduct, whereas a school administrator who initiated harassment might be charged with 'immoral conduct,' especially where the conduct continues over a period of time. The adverse impacts on teachers and the institution are also circumstantial evidence of the severity of the conduct.

"The court has considered the evidence that other persons also swore from time to time and also used derogatory language, but it is not persuaded that the school culture was so coarse that Vranesh's conduct was accepted conduct in the workplace. On the contrary, coming from the principal and coupled with threatening comments by him towards female employees, the conduct here was egregious.[1] In so finding, the court rejects Vranesh's argument that he has been unfairly singled out. The court has not located evidence in the record that other persons engaged in similar conduct. Even if such evidence existed, '[u]nequal treatment which results simply from laxity of enforcement or which reflects a nonarbitrary basis for selective enforcement of a statute does not deny equal protection and is not constitutionally prohibited discriminatory enforcement.' [Citations.]

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1 Judge Carvill had earlier noted that his review of the evidence affirms the CPC's findings on the misconduct charge to the extent they are based on sexual harassment, a sentence followed by this: "There is consistent and corroborated evidence that Vranesh repeatedly referred to female employees as 'bitch' and 'cunt.' That would be sufficient, and the record also contains evidence of other sexually harassing statements."

"The court has considered Vranesh's argument that the proceeding is in retaliation for his complaints. The court is not persuaded that the [dismissal] proceeding is retaliation. The proceeding was commenced at the District level before Vranesh made his complaints, and the timing of the latter strongly suggest they were a defensive tactic. The court draws an adverse inference regarding Vranesh's credibility based on his resort to such tactics. In addition, even if Vranesh's complaints preceded this proceeding, the evidence demonstrates that the District had a legitimate business reason to terminate Vranesh based on its charge of sexual harassment and destruction of data.

"The court finds that Vranesh received training on sexual harassment under Government Code 12950.1 in 2006, 2007, 2009, 2012 and 2013 (AR 2501), was in a position of authority as the principal, and despite such training had engaged in a concerted pattern of harassment of a repeated, routine and generalized nature. Vranesh's knowledge, authority, and initiation of repeated acts of sexual harassment support a finding of 'immoral conduct' as that term is used in the Code.

"In reaching these conclusions, the court has considered one other argument advanced by Vranesh—namely, that all the underlying conduct was in his role as principal and none from his tenure as a certificated teacher. While this is true, the court believes that, if as here the evidence of sexual harassment arising from his service as a principal is sufficient to rise to 'immoral conduct,' that same conduct can serve as a basis for his dismissal as a certificated teacher. It can and on this record does."

Vranesh argues: "As a matter of law, the Superior Court's finding of 'immoral conduct' is defective and lacking because it failed to establish conduct relative to Vranesh's fitness or unfitness to teach." Given that fitness to teach is "a [determination] of ultimate fact" (*San Diego*, at pp 1142–1143), we would expect Vranesh to attempt to demonstrate that there is insufficient evidence in the administrative record to support the numerous findings of fact made by the commission and "affirmed" by Judge Carvill. He makes no attempt to do so. Instead, he appears to argue that what he did or said was not sufficiently egregious to satisfy the legal definition of a hostile environment. Again, he is wrong.

"Past California decisions have established that the prohibition against sexual harassment includes protection from a broad range of conduct, ranging from expressly or impliedly conditioning employment benefits on submission to or tolerance of unwelcome sexual advances, to the creation of a work environment that is hostile or abusive on the basis of sex. [Citations.] Such a hostile environment may be created even if the plaintiff never is subjected to sexual advances. . . .

"We have agreed with the United States Supreme Court that, to prevail, an employee claiming harassment based upon a hostile work environment must demonstrate that the conduct complained of was severe enough or sufficiently pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to employees because of their sex. [Citations.] The working environment must be evaluated in light of the totality of the circumstances: '[W]hether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.' [Citation.]

"The United States Supreme Court has warned that the evidence in a hostile environment sexual harassment case should not be viewed too narrowly: '[T]he objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position, considering "all the circumstances." [Citation.] . . . . [T]hat inquiry requires careful consideration of the social context in which particular behavior occurs and is experienced by its target. . . . The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed. Common sense, and an appropriate sensibility to social context, will enable courts and juries to distinguish between simple teasing or roughhousing . . . and conduct which a reasonable person in the plaintiff's position would find severely hostile or abusive.' [Citations.]" (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 461–462, fn. omitted.)

Again, one making a totality of the circumstances argument would be expected to summarize the evidence in the administrative record that is pertinent to that broad inquiry. The scope of the inquiry would also have to cover the additional area of the so-called *Morrison* factors (see pp. 21–22, *post*) used to establish dismissible immoral conduct. The showing would have to be unusually complete and compelling to overcome the additional factor of the devastating credibility determinations made by the commission and accepted by Judge Carvill. Here are a couple of details Vranesh does not provide. According to the commission, "As principal of Walnut Grove, Respondent supervised a staff of about 40. Thirty-eight of the staff were women." The commission also noted that "Respondent attended sexual harassment training provided by the District in 2006, 2007, 2009, 2012 and 2013."

So, among an overwhelmingly female audience, and in the face of repeated and extensive training, there is the commission's conclusion that Vranesh "engaged in a pattern of using language that was vulgar and sexually degrading, and at times threatening and intimidating, towards female subordinate employees." Vranesh tries to dismiss his remarks as "merely offensive profanity allegedly uttered by Vranesh, who was referring to other people who were not present, and not to the District employee who witnessed said profanity." The commission devoted almost three pages detailing the "Adverse Impact of Respondent's Conduct Toward Employees." The reverberations are still being felt: Vranesh's replacement as principal testified and "named 14 teachers—about one-third of her staff—who she described as 'struggling emotionally' as a result of Respondent's misconduct." Clearly, offensive remarks Vranesh aimed at staff members who were not present eventually made their way to the intended targets, contributing to the unhealthy environment. Two witnesses expressly treated Vranesh's conduct as evidence of his unfitness to teach.

Judge Carvill concluded that Vranesh's "concerted pattern of harassment" was sufficiently "egregious" to constitute immoral conduct, thus warranting his dismissal. Because that determination has the support of substantial evidence, and did not employ

an erroneous legal standard, it cannot be overturned on this appeal. (*San Diego*, at pp. 1141–1142; *Candari*, at pp. 407-408.)

"The Finding of Facts Supporting the Charge of Dishonesty did not Justify Dismissal"

Dishonesty is another ground for dismissal. (§ 44932, subd. (a)(4).)

The commission concluded that "Based upon the matters set forth in Factual Findings 2, 5, 7, 42, 44-46, it was established that Respondent committed acts of dishonesty pursuant to Education Code section 44932, subdivision (a)(4), by reason of his denial to the District that he had engaged in any misconduct towards female subordinate employees; by his destruction of the data on the District's laptop and then returning the laptop to the District without mentioning his it [*sic*]; and his taking and using District emails for his personal use." Judge Carvill upheld only the "Destruction of Data," as follows:

"The court in its independent review of the evidence affirms the CPC's findings on the dishonesty charge to the extent they are based on the destruction of data. On November 18, 2013, at 12:35 p.m. the District directed Vranesh to return the laptop and Vranesh destroyed the data the very next day at 6:31 a.m. Vranesh then returned the laptop without reporting the destruction of the data. These facts demonstrate a purposeful and thoughtful plan to hide information from the District. [¶] Vranesh argues that District-related emails were always accessible on the District server and he was simply ensuring that his private communications—e.g., emails to or from his counsel or spouse—were protected; however, it is not at all clear that District information in the form of personnel reviews and the like not sent via email were available on its server, and to the extent that Vranesh was concerned about private communications such as to his attorney or spouse that could have been accomplished without the wholesale scrambling or reformatting of his hard drive. The timing, unusual manner and extent of the deletions all support an adverse inference that his intent was to destroy potential evidence."

Vranesh argues this single incident is insufficient to justify his dismissal because there is no nexus between the single incident of his wiping the hard drive and his fitness to teach. We are not persuaded.

Vranesh cites *Governing Board of the Oakdale Union High School Dist. v. Seaman* (1972) 28 Cal.App.3d 77 for the proposition "A teacher may not be dismissed for violating school laws unless the violations are **persistent**." The court in *Seaman* made no such holding. The word "persistent" is used in the opinion only because it was the language in the school's regulations that formed part of the charges made against the teacher and sustained by the trial court (in a non-administrative proceeding). (*Id*. at pp. 81-82.)

The word "persistent" appears only in section 44392, subdivision (a)(8)—"Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools . . . ." We have no authority to graft "persistent" on to the language of subdivision (a)(4). (See, e.g., *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 545 ["we may not broaden or narrow the scope of the provision by reading into it language that does not appear in it or reading out of it language that does"].)

There is reason to question the soundness of the other part of Vranesh's reasoning. A teacher may be a Socrates in the classroom, but that cannot be a license to embezzle a large sum from the school. There is no logic in immunizing the first instance of dishonesty, precluding dismissal until a pattern is established.

"It Was Error to Dismiss Vranesh from his Position as a Teacher because the Superior Court Specifically Found no Evidence his Conduct in any Manner Affected his Performance as a Teacher or that he was Unfit to Teach"

We come, at last, to the heart of Vranesh's appeal.

The district's Superintendent and the Assistant Superintendent for Human Resources testified to the commission that Vranesh's behavior made him, in their

opinions, unfit to teach. The commission's decision includes an extensive analysis of the subject of Vranesh's "Unfitness for service." With minor editorial modifications added by us, it deserves quotation in full:

"Before a decision can be made as to whether there is cause to dismiss Respondent, it must first be determined whether Respondent's conduct demonstrates that he is unfit to teach under the criteria set forth by the California Supreme Court in *Morrison v. State Board of Education* ([1969]) 1 Cal.3d 214. Those criteria are: (1) the likelihood that the conduct may have adversely affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in time of the incident; (4) the type of teaching certificate held by the teacher; (5) the extenuating or aggravating circumstances, if any, of the conduct in question; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of recurrence of the questioned conduct; and (8) the extent to which disciplinary action may have an adverse or chilling effect upon the constitutional rights of the teacher involved or other teachers. Not all of the *Morrison* factors must be considered, only the most pertinent ones. **(***West Valley-Mission Community College District v. Conception* (1993) 16 Cal.App.4th 1766, 1777.) And the *Morrison* factors may be applied to all the charges in the aggregate. **(***Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429,1456-1457.)

"An application of the most pertinent *Morrison* factors to Respondent's conduct demonstrates that Respondent is unfit to teach. Respondent engaged in serious misconduct involving District employees and District property, which had a severely adverse impact on the District, and particularly, the Walnut Grove staff. First, during 2012 through October 2013, Respondent engaged in a pattern of using language that was vulgar and sexually degrading, and at times threatening and intimidating, towards female subordinate employees. Respondent's sexual harassment of staff members had the effect of creating a hostile work environment at Walnut Grove and negatively impacted the work of the employees. This conduct amounts to a serious and protracted abuse of his

authority, which reasonably caused the impacted employees to believe that their jobs or physical safety were at risk.

"Second, with respect to District property, Respondent purposefully destroyed the data on the District's laptop. . . . These actions reflect a lack of integrity on the part of Respondent. These actions also had an adverse impact on the District in that it lost the data on the laptop, and the District was placed in a position where one of its employees had broken a time-honored prohibition against disclosure of pupil information.

"As to the factor of 'proximity,' respondent's misconduct is not remote in time in that it continued up to (and after) the time that he was placed on administrative leave as principal at Walnut Grove.

"The totality of Respondent's conduct had a serious adverse impact on Walnut Grove staff, as well as the community of families served by Walnut Grove. The morale and cohesiveness of a once high functioning school was broken as a result of his conduct.

"Instead of taking responsibility for his misconduct, after he was placed on administrative leave, Respondent released a statement to the Pleasanton Weekly in which he asserted that the District removed him from his position as principal in retaliation for his reporting safety violations at Walnut Grove. In so doing, he misled the community as to the real reason for his removal and created further fractures in the community. To this day, teachers who once enjoyed the respect and support from the parent community continue to struggle with the harm to their professional reputations. About one-third of the staff struggled emotionally as a result of Respondent's behaviors. After Respondent's removal from his position garnered media attention, a handful of employees were the targets of vandalism, placing them in physical peril and causing the District to hire security guards and install a fence and security cameras at the school. It has taken time and careful remedial efforts on the part of the current principal to slowly restore the trust among staff and between staff and the principal. This process is ongoing.

"Insofar as Respondent continues to believe that he was wronged by the District, and denies responsibility for his actions, there is no evidence to suggest that Respondent has learned from his mistakes or that his behavior will improve in the future.

"There is nothing praiseworthy about the motives resulting in Respondent's misconduct. There are no extenuating or mitigating circumstances. In aggravation of his misconduct, however, it is noted that Respondent's testimony at hearing lacked credibility and candor. Respondent's failure to accept responsibility for his misconduct is reflected in his steadfast and unpersuasive denial of each and every allegation against him.

"Disciplinary action against Respondent would have no adverse or chilling effect on his constitutional rights. Failing to impose discipline could, however, chill the rights of the female teachers who were courageous enough to step forward and report Respondent's sexual harassment, despite the fact that their professional reputations greatly suffered for speaking up.

"Respondent's misconduct raises serious concerns as to whether he can be trusted to return to the classroom as a teacher in any capacity, and particularly in the capacity of a special education teacher. Respondent's misconduct evidences a lack of honesty and a disregard for the rights of his staff and students, as well as the interests and policies of the District and the laws of the state. Insofar as special education students are among the most vulnerable students in the District, they are especially in need of teachers who can be trusted to act with integrity, treat them respectfully, and maintain confidentiality, as required by Board policies and statutes.

"For these reasons it is determined that Respondent is not fit to return to the classroom as a special education teacher.

"In spite of Respondent's misconduct, he has positive qualities as an educator, as evidenced by positive performance reviews as well as the testimony of various teachers. These factors, however, do not mitigate the serious nature and extent of Respondent's misconduct, and his inability or unwillingness to acknowledge his misconduct." (Fn. omitted.)

As part of its "Legal Conclusions," the Committee determined:

"As interpreted by the Court of Appeal in *Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, the term evident

unfitness for service as used in Education Code section 44932 'connotes a fixed character trait, presumably not remedial merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district.' (*Woodland*, *supra*, at p. 1444.) In other words, conduct constituting evident unfitness for service must demonstrate that the 'unfitness for service be attributable to a defect in temperament—a requirement not necessary for a finding of "unprofessional conduct." ' (*Woodland*, *supra*, at p. 1445.)

"It was established that Respondent demonstrated evident unfitness for service pursuant to Education Code section 44932, subdivision (a)(6). Respondent lacks the temperament to teach special education students because his conduct evidences a profound indifference to the rights of a protected class (women subordinate employees) at Walnut Grove over a protracted period of time; dishonesty; a disregard for the privacy rights of his students and staff; a disregard of District rules and policies; and an unwillingness to admit any wrongdoing on his part. (Factual Findings 2, 4-7, 21-31, 42-50, 58-62.) These factors suggest a fixed character trait that is not remediable.

"It was established that Respondent committed acts demonstrating a persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the governance of the public schools by the State Board of Education or by the governing board of the District employing him pursuant to Education Code section 44932, subdivision (a)(8), by reason of, among other things, his violations of the District's policies and school laws regarding sexual harassment, pupil records, and technology policies. (Factual Findings 58-62.) Such violations were repeated and occurred over a protracted period of time. (See *Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 82.)."

Judge Carvill did not agree: "The court in its independent review of the evidence would not find unfitness for service. The District's evidence is the inference that a person who engaged in the sexual harassment, destruction of data, denial of responsibility, and other actions must have a fixed character trait that caused those actions. The court will not make the inference of a fixed character trait. The record shows behavior over a three year period of a concerted pattern of harassment and a

purposeful and a one-time thoughtful plan to hide information from the District. The record also shows no similar incidents prior to this time period and that even during the time period there were persons who thought Vranesh was 'good principal' who appeared 'passionate about education' (AR5424) and an honorable man (AR 3416). The record contains no evidence regarding Vranesh's performance as a special education teacher. The court finds that the evidence does not demonstrate that Vranesh had 'a fixed character trait' that was inconsistent with employment at a school district as a special education teacher or in any other capacity."

As it is framed, Vranesh's contention is not tenable. Judge Carvill did not conclude there was no evidence, just not enough to make out unfitness to teach. However, at the same time and from the same record, Judge Carvill concluded Vranesh had committed "immoral conduct," a conclusion he could not reach unless consideration of the *Morrison* factors established that Vranesh was unfit to teach. This seeming contradiction is explained by appreciating that "fitness" in this context is not the same as the "fitness" needed for immoral conduct. What Judge Carvill did not see was the fixed trait needed for dismissal under subdivision (a)(7) of section 44932: "Physical or mental condition unfitting him or her to instruct or associate with children." But Vranesh cannot use Judge Carvill's conclusion that unfitness was *not* shown for subdivision (a)(7) to impeach his conclusion that unfitness *was* shown for subdivision (a)(1). Judge Carvill's conclusion that unfitness was *not* shown for subdivision (a)(7) does not control, or override, the other grounds for removal found by the omission and sustained by Judge Carvill, namely immoral conduct and dishonesty. (§ 44932, subds. (a)(1) & (a)(4).) In short, unfitness means one thing for purposes of subdivision (a)(1) and something else for purposes of subdivision (a)(7).

It is understandable why Vranesh seizes upon this apparent discrepancy, and he uses it to attack the validity of the accusations upheld by Judge Carvill. However, he makes far too much of it. In the midst of arguing he should not have been dismissed as a teacher because of what he did as a principal, Vranesh includes a sub-argument that "The Court's Unilateral Decision to Evaluate Vranesh's Dismissal from his Teaching Position

on his Prior Conduct in his Role of a Principal, without an Inquiry into his Fitness to Teach, Violated Vranesh's Rights to Practice his Profession as a Teacher." However, as already shown, Judge Carvill's decision—which can hardly be characterized as unilateral—had to encompass unfitness because that it the "ultimate fact" (*San Diego*, at pp. 1142–1143) for dismissal. Thus, Vranesh is certainly wrong is asserting that Judge Carvill "specifically found no evidence . . . that he was unfit to teach."

The commission specified that "each of the grounds alleged" and sustained "provides a separate and independent ground for dismissal." Each was a stand-alone charge, and not the only reason for his discharge. Judge Carvill agreed with the commission that that immoral conduct and dishonesty were established. Concerning the former, Judge Carvill characterized it as "a concerted pattern of harassment." Concerning the latter, Judge Carvill found that Vranesh's actions "demonstrate a purposeful and thoughtful plan to hide information from the District." Such language is disturbing when contemplating Vranesh's return to an elementary schoolroom of special education students. Together, the two grounds are ample support for the ultimate fact of unfitness to teach. (*San Diego*, at pp. 1142–1143; *Candari*, at pp. 407-408.)

DISPOSITION

The judgment is affirmed.

_____
Richman, J.

We concur:

_____
Kline, P. J.

_____
Stewart, J.

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